

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

Joseph Mizzoni,

Plaintiff

v.

Romeo Aranas, et al.,

Defendants

Case No.: 2:17-cv-01482-JAD-NJK

**Order Granting the Defendants' Motion  
for Summary Judgment, Denying the  
Plaintiff's Motion for Summary Judgment,  
and Closing Case**

[ECF Nos. 21, 30]

Pro se plaintiff and former Nevada state prisoner Joseph Mizzoni brings this civil-rights action against Nevada Department of Corrections administrators and doctors, claiming that the care he received for his hepatitis C constituted deliberate indifference to his serious medical needs.<sup>1</sup> The defendants move for summary judgment, arguing that they are entitled to qualified immunity.<sup>2</sup> Mizzoni opposes their motion and moves for summary judgment on the merits of his claim.<sup>3</sup> Because Mizzoni doesn't show that his asserted right was clearly established at the time of the alleged deliberate indifference, he fails to overcome the defendants' qualified-immunity claim. So, I grant the defendants' motion, deny Mizzoni's, and close this case.

**Background**

Mizzoni received his hepatitis C diagnosis in 2010 while housed at Ely State Prison (ESP).<sup>4</sup> After his transfer to High Desert State Prison (HDSP) in 2015, Mizzoni was seen by Dr. Gregory Bryan, a senior physician at HDSP.<sup>5</sup> When Mizzoni complained of abdominal pain and

---

<sup>1</sup> ECF No. 3.

<sup>2</sup> ECF No. 21.

<sup>3</sup> ECF Nos. 29, 30.

<sup>4</sup> ECF Nos. 1 at 2, 21-1 at 3.

<sup>5</sup> ECF No. 21-1 at 3.

1 told Dr. Bryan about his diagnosis, Dr. Bryan ordered bloodwork, which showed no  
2 inflammation of Mizzoni’s liver and didn’t indicate that Mizzoni’s various medical complaints  
3 were related to hepatitis C.<sup>6</sup>

4       Hepatitis C is a viral disease of the liver that can, over time, lead to cirrhosis, liver  
5 failure, and death.<sup>7</sup> This progression is usually slow. Because treating hepatitis C is expensive  
6 and could sacrifice medically necessary care for other inmates, the Nevada Department of  
7 Corrections (NDOC) prioritizes Direct Acting Antiviral agent treatment based on NDOC  
8 Medical Directive 219.<sup>8</sup> That policy directs treatment of hepatitis C and excludes certain  
9 infected patients from treatment, including those with an “APRI score” of less than 2 (or 1.5 if  
10 the prisoner-patient shows signs of advanced fibrosis or cirrhosis).<sup>9</sup> An APRI score is based on  
11 the Aspartate Aminotranferase to Platelet Ratio Index, a formula used to predict severe fibrosis  
12 or cirrhosis with blood test results.<sup>10</sup>

13       When a prisoner has a chronic illness like hepatitis C, he is eligible for NDOC’s chronic-  
14 disease management clinic, which provides regular monitoring, assessment, and treatment of  
15 chronic illnesses.<sup>11</sup> The day that Mizzoni mentioned his diagnosis to Dr. Bryan, Dr. Bryan  
16 enrolled Mizzoni in that clinic.<sup>12</sup> As a result, Mizzoni had his blood tested several times to  
17 monitor his APRI score and met with Drs. Bryan and Martin Naughton to discuss his

---

19 <sup>6</sup> *Id.*

20 <sup>7</sup> *Id.*

21 <sup>8</sup> *Id.*; ECF No. 21-3.

22 <sup>9</sup> ECF No. 21-3 at 6.

23 <sup>10</sup> *Id.*

<sup>11</sup> ECF No. 21-11.

<sup>12</sup> ECF No. 21-12.

1 condition.<sup>13</sup> At no time during his incarceration at HDSP did Mizzoni’s APRI scores rise to the  
2 level that would qualify him for treatment under Medical Directive 219.<sup>14</sup>

3 Mizzoni sues Dr. Bryan, NDOC Medical Director Aranas, and NDOC Director Dzurenda  
4 (whom he alleges is the final decisionmaker for hepatitis treatment) asserting a single, deliberate-  
5 indifference-to-serious-medical-needs claim under 42 U.S.C. § 1983.<sup>15</sup> Mizzoni theorizes that  
6 he was forced to suffer with hepatitis C until his release in 2019 “for no reason medically, just  
7 cost . . . .”<sup>16</sup>

## 8 Discussion

### 9 A. Summary-judgment standard

10 Summary judgment is appropriate when the pleadings and admissible evidence “show  
11 there is no genuine issue as to any material fact and that the movant is entitled to judgment as a  
12 matter of law.”<sup>17</sup> When considering summary judgment, the court views all facts and draws all  
13 inferences in the light most favorable to the nonmoving party.<sup>18</sup> If reasonable minds could differ  
14 on material facts, summary judgment is not appropriate and the case must proceed to trial.<sup>19</sup>

15 If the moving party satisfies Rule 56 by demonstrating the absence of any genuine issue  
16 of material fact, the burden shifts to the party resisting summary judgment to “set forth specific  
17  
18

---

19 <sup>13</sup> ECF Nos. 13, 14.

20 <sup>14</sup> ECF No. 21-1 at 3–4.

21 <sup>15</sup> ECF No. 2 (screening order).

22 <sup>16</sup> ECF No. 29 at 5.

23 <sup>17</sup> *See Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986) (citing Fed. R. Civ. P. 56(c)).

<sup>18</sup> *Kaiser Cement Corp. v. Fishbach & Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986).

<sup>19</sup> *Warren v. City of Carlsbad*, 58 F.3d 439, 441 (9th Cir. 1995); *see also Nw. Motorcycle Ass’n v. U.S. Dep’t of Agric.*, 18 F.3d 1468, 1471 (9th Cir. 1994).

1 facts showing that there is a genuine issue for trial.”<sup>20</sup> “To defeat summary judgment, the  
2 nonmoving party must produce evidence of a genuine dispute of material fact that could satisfy  
3 its burden at trial.”<sup>21</sup>

4 **B. The defendants are entitled to qualified immunity for Mizzoni’s deliberate-**  
5 **indifference claim.**

6 “Qualified immunity protects government officers ‘from liability for civil damages  
7 insofar as their conduct does not violate clearly established statutory or constitutional rights of  
8 which a reasonable person would have known.’”<sup>22</sup> “To determine whether an officer is entitled  
9 to qualified immunity,” the court asks, in the order it chooses, “(1) whether the alleged  
10 misconduct violated a right and (2) whether the right was clearly established at the time of the  
11 alleged misconduct.”<sup>23</sup> “A government official’s conduct violates clearly established law when,  
12 at the time of the challenged conduct, [t]he contours of [a] right [are] sufficiently clear that every  
13 reasonable official would have understood that what he is doing violates that right.”<sup>24</sup>

14 The plaintiff bears the burden of showing the rights at issue were clearly established at  
15 the time of the defendant’s actions.<sup>25</sup> The plaintiff need not identify a case “directly on point,  
16 but existing precedent must have placed the statutory or constitutional question beyond  
17 debate.”<sup>26</sup> I make this second inquiry “in light of the specific context of the case, not as a broad  
18

---

19 <sup>20</sup> *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986); *Celotex*, 477 U.S. at 323.

20 <sup>21</sup> *Sonner v. Schwabe N. Am., Inc.*, 911 F.3d 989, 992 (9th Cir. 2018).

21 <sup>22</sup> *Maxwell v. Cty. of San Diego*, 708 F.3d 1075, 1082 (9th Cir. 2013) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)).

22 <sup>23</sup> *Id.* (citing *Pearson v. Callahan*, 555 U.S. 223, 232 (2009)).

23 <sup>24</sup> *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011) (quotation omitted).

24 <sup>25</sup> *Robinson v. York*, 566 F.3d 817, 826 (9th Cir. 2009).

25 <sup>26</sup> *Id.*

1 general proposition.”<sup>27</sup> The Supreme Court of the United States has cautioned lower courts to  
2 avoid addressing qualified immunity at a high level of generality.<sup>28</sup> Courts must consider the  
3 specific facts of the case and determine whether an official would know his or her actions  
4 violated clearly established law in those particular circumstances.<sup>29</sup> A defendant will be entitled  
5 to qualified immunity even if he was mistaken in his belief that his conduct was lawful, so long  
6 as that belief was reasonable.<sup>30</sup> The defendants argue that they are entitled to qualified immunity  
7 because they reasonably believed that monitoring Mizzoni’s condition under the NDOC’s  
8 treatment plan was lawful. They contend that Mizzoni cannot show that he had a clearly  
9 established right to treatment outside of what he received.

10       It is Mizzoni’s burden to show that the right he claims the defendants violated was clearly  
11 established at the time of the alleged misconduct. Mizzoni doesn’t dispute that he was enrolled  
12 in the chronic-disease management protocol and that his condition was monitored and assessed  
13 like any other prisoner-patient enrolled in that program. While he argues that, generally, he has a  
14 right to treatment, he fails to define the right at issue in this case with sufficient particularity.  
15 Mizzoni is asserting a right not just to treatment, but to the most thorough care available to treat  
16 his chronic illness. But he doesn’t point to any case law that shows that he has a clearly defined  
17 right to more treatment than he received under NDOC’s protocols. Mizzoni has therefore failed

18  
19  
20  
21 <sup>27</sup> *Saucier v. Katz*, 533 U.S. 194, 201 (2001).

22 <sup>28</sup> *Id.*; see also *Sheehan v. Cty. Of San Francisco*, 135 S. Ct. 1765, 1775–76 (2015); *Kisella v. Hughes*, 138 S. Ct. 1148, 1152–53 (2018).

23 <sup>29</sup> *City of Escondido v. Emmons*, 586 U.S. \_\_\_, 139 S.Ct. 500 (2019) (per curiam) (slip op. at 5).

<sup>30</sup> *Wilkins v. City of Oakland*, 350 F.3d 949, 955 (9th Cir. 2003).

1 to show a genuine dispute of material fact about whether the defendants are entitled to qualified  
2 immunity.<sup>31</sup> So, I grant the defendants' motion for summary judgment and deny Mizzoni's.

3 **Conclusion**

4 IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the defendants'  
5 motion for summary judgment [ECF No. 21] is **GRANTED** and Mizzoni's motion for summary  
6 judgment [ECF No. 30] is **DENIED**.

7 And with good cause appearing and no reason to delay, IT IS FURTHER ORDERED  
8 that the **Clerk of Court** is directed to **ENTER FINAL JUDGMENT** in favor of the defendants  
9 and against Mizzoni and **CLOSE THIS CASE**.

10 Dated: July 9, 2019

11   
12 \_\_\_\_\_  
13 U.S. District Judge Jennifer A. Dorsey  
14  
15  
16  
17  
18  
19  
20  
21

22 <sup>31</sup> Mizzoni devotes considerable time in his response to an argument based on the Equal  
23 Protection Clause in the Fourteenth Amendment. But he has no equal-protection claim in this  
case, nor has he moved to add one. His complaint asserted a single cause of action for deliberate  
indifference to serious medical needs in violation of the Eighth Amendment. I therefore do not  
consider the new theory of liability that Mizzoni raises in his summary-judgment briefing.